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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,176	09/17/2003	John L. White	P214414	8586
30662 7590 04/11/2008 SCHACHT LAW OFFICE, INC. SUITE 202 2801 MERIDIAN STREET BELLINGHAM, WA 98225-2412				
EXAMINER				
TRUONG, THANH K				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
04/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/667,176

**Applicant(s)**

WHITE, JOHN L.

**Examiner**

THANH K. TRUONG

**Art Unit**

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4, 6, 8, 9, 12, 13, 18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6, 8, 9, 12, 13, 18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This action is in response to applicant's amendment received on January 14, 2008.
2. Applicant's cancellation of claims 2, 3, 5, 7, 10, 11, 14-17, 19 and 20 is acknowledged.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 6, 8, 9, 12, 13, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleishman et al. (4,421,180) in view of Scheid et al. (6,102,133) and Nishimura et al. (3,789,930).

Fleishman et al. discloses an apparatus and a method comprising:

a housing member (21) defining a housing chamber (the space between the housing and the ram member); a ram member (17) supported within the housing chamber for movement relative to the housing member between an upper position and a lower position; and a vent port (33) arranged between the lower and upper positions, where the vent port defines a preload position, and allows ambient air to flow into and out of the housing chamber under predetermined conditions (column 4, lines 9-13);

a helmet member (19, 27) supported by the housing member for movement relative to the housing member between a rest position and an impact position; and

a lifting assembly (65, 67) at least partly disposed within the housing chamber above the ram member, and engages the ram member to lift the ram member from the lower position to the upper position during each cycle; whereby

the lifting assembly

when the lifting system raises the ram member above the preload position, ambient air flows into the housing chamber;

when the ram member falls below the preload position, ambient air within a preload chamber portion of the housing chamber compresses to apply a preload force on the inner portion of the helmet member (figure 5); and

when the ram member moves into the lower position, the ram member impacts the helmet member to force the helmet member from the rest position to the impact position, thereby driving the pile.

As discussed above, Fleishman et al. discloses the claimed invention, but it does not expressly disclose a seal system for sealing the preload chamber portion of the housing chamber.

Scheid et al. discloses that:

*"There are other prior art pile hammers, wherein a hammering piston is lifted by means of a hydraulic actuator arranged outside of a guiding cylinder, the hammering piston thereafter being allowed to fall freely onto the hammering member. Such softly operating pile hammers are used particularly, where piles and the like must be hammered into soft soil or where production of heavy noise as produced by Diesel type pile hammers cannot be tolerated."* (emphases added) (Scheid et al. – column 1, lines 19-26).

Scheid et al. discloses a seal system for sealing the preload chamber portion of the housing chamber when the ram member is below the preload position (figure 1 of

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Scheid et al. shows ram 26 and helmet member 12 have seal members at their distal ends). Scheid et al. sealing system provides an airtight chamber within the housing below the sealing system of the ram. In column 7, lines 17-20 Scheid et al. discloses:

*"Upon further upward movement the hammering piston 26 will take in fresh air through the working slot 36, and upon the hammering piston falling down the air contained in the cylinder will be compressed once the hammering piston 26 has moved past the working slot 36 in downward direction"* (emphasis added); and

Nishimura et al. disclose that:

*"In studying the mechanics of noise generation in conventional diesel pile hammers, it has been found that a substantial part of the noises heretofore generated by such devices is due to the direct contact of the rams thereof with their anvils, as in striking a blow."* (emphases added) (Nishimura et al. – column 1, lines 33-37).

One in the art would recognize that in order to reduce the noise, one would be required reduce the mechanical impact between the ram and the anvil, and furthermore, the compressed air in an airtight chamber would soften the impact between the ram and the anvil.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Fleishman et al. by incorporating the seal system as taught by Scheid et al. to provide an airtight chamber within the housing below the sealing system of the ram. This modification would reduce the impact between the ram and the anvil and thus also would reduce the noise generated by the apparatus as suggested by Nishimura et al. as mentioned above.

The modified Fleishman et al. by Scheid et al. further discloses: air is prevented from flowing through the vent port when the ram member is below the preload position

(Scheil et al. - column 7, lines 17-20); and the ram member defines a ram side wall; the housing member defines a housing interior wall; the seal system comprises a ram seal for inhibiting fluid flow between the ram side wall and the housing interior wall; the pile is being secured by the drop hammer by clamp (25) in order for the pile to be driven into the ground; and the ram member moves from the lower position to the upper position and back to the lower position to define an operating cycle; the lifting assembly engages and lifts the ram member from the lower position to the upper position once during each operating cycle.

#### ***Response to Arguments***

5. Applicant's arguments filed January 14, 2008 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to THANH K. TRUONG whose telephone number is (571)272-4472. The examiner can normally be reached on Mon-Fri 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tkk  
April 9, 2008.

/Thanh K Truong/  
Primary Examiner, Art Unit 3721.